APPEAL NO. 033032
FILED DECEMBER 31, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on November 3, 2003. The hearing officer determined that the great weight of other medical evidence is not sufficient to contradict the finding of 18% impairment rating (IR) as determined by the Texas Workers' Compensation Commission (Commission)-selected designated doctor, Dr. L, on March 21, 2003. The appellant (carrier) appeals, asserting that the hearing officer failed to correctly apply the law, and that his decision is not supported by the evidence. The respondent (claimant) responds, urging affirmance.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____. Her treating doctor was a chiropractor, and in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(b)(4) (Rule 130.6(b)(4)), then in effect, Dr. L, a chiropractor, was selected by the Commission as the designated doctor. The claimant first saw the designated doctor on April 13, 2001, and Dr. L completed a Report of Medical Evaluation (TWCC-69) in which he stated that the claimant reached maximum medical improvement (MMI) on February 26, 2001, with a 7% IR. Using the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), Dr. L found no specific disorders (presumably because less than six months had elapsed since the date of injury), and assigned an IR of 4% for cervical loss of range of motion (ROM) and an IR of 3% for lumbar loss of ROM. He invalidated the claimant's shoulder ROM tests based on his observations.

The claimant subsequently participated in the PRIDE program, a medically supervised chronic pain management program, and was released to return to work full time with permanent lifting restrictions. By Notice of [MMI/IR] Rating Dispute (TWCC-32) dated November 13, 2001, the claimant disputed the designated doctor's certification of MMI/IR. A benefit review conference was held on June 17, 2002, and the benefit review officer was provided with additional records that he agreed to send to the designated doctor. Dr. L reviewed the records provided and on July 3, 2002, requested that the claimant return for another examination. The next TWCC-69 from Dr. L reflects that he examined the claimant on November 6, 2002, and found her to be at MMI on that date with a 13% IR, based upon the AMA Guides, Table 49, (II)(B), specific disorders, documented pain over six months duration (cervical: 4%; lumbar: 5%) and loss of ROM (cervical: 2%; lumbar: 2%). Dr. L found ROM for the left shoulder to be normal. The file reflects that a dispute resolution officer wrote to Dr. L on March 12, 2003, asking that he "review the enclosed information regarding rounding of the [ROM] measurements and advise us whether your opinion remains the same or changes."

From Dr. L's response dated March 21, 2003, it is apparent that he was provided with copies of our decisions in Texas Workers' Compensation Commission Appeal No. 000827, decided May 24, 2000, and Texas Workers' Compensation Commission Appeal No. 000873, decided June 6, 2000. Dr. L understood from reading those decisions that he had incorrectly rounded off the ROM measurements, and that he needed to recalculate the impairment rating. He attached a new TWCC-69 which certifies an 18% IR.

On these facts, the carrier first asserts error in that the correct designated doctor should be a medical doctor, instead of a chiropractor. The carrier argues that although a chiropractor was properly appointed under the previous Section 408.122(b), the June 17, 2001, amendment to that provision states that the designated doctor must be trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and the treatment and procedures performed must be within the scope of practice of the designated doctor. The carrier asserts that since the claimant was receiving medical treatment from medical doctors in the PRIDE program and was receiving prescriptions, that the designated doctor must be a medical doctor and cannot be a chiropractor. Under the circumstances of this case, we disagree. The claimant's treating doctor has been, at all times relevant to this case, Dr. F, a chiropractor, and the medical doctors associated with the PRIDE program were all referral doctors. To adopt the carrier's position would mean that a chiropractor could never be a designated doctor in any case where there had been a referral to any other type of doctor, or if any medication had ever been prescribed for a patient. We doubt that this was the intent of the statutory or rule changes. The claimant in this case has not had surgery or other specialized medical treatment, nor are her injuries such that extraordinary expertise would be required to fairly evaluate the injuries and arrive at an IR appropriate for those injuries. We reject the carrier's assertion that Dr. L could not reexamine the claimant. The decision to send the claimant back to the same designated doctor for an additional or supplemental examination, rather than a completely new examination, was a logical decision, and appropriate in this case.

The carrier next argues that Dr. L is incompetent and his reports should not be given presumptive weight. The crux of the argument is that Dr. L has seen the claimant twice and has done a reconsideration, and he has furnished three different IRs. The short answer to that contention is that impairments can and do vary somewhat, and the fact that there have been three different IRs assessed does not mean that the designated doctor was incompetent. The first IR reflects the fact that it was done less than six months after the injury and no "specific disorder" rating could be made. The claimant had valid ratings for loss of cervical and lumbar ROM, even though the designated doctor excluded the ROM tests for the left shoulder, and she still received an IR of 7%. By the time of the second examination, the claimant met the criteria for a "specific disorder" rating of her cervical and lumbar spine conditions, accounting for 9% of the 13% IR assessed at that time. The third rating was the result of the designated doctor being advised that he could not round off the ROM measurements. While it would have been better if he had included his actual calculations, the figures were the

same ones he used for his second rating, and were included with that TWCC-69. We reject the carrier's argument that the designated doctor was incompetent.

The carrier argues that the designated doctor was improperly influenced, creating prejudice in his evaluations. The carrier is referring to the fact that Dr. L was sent copies of two of our decisions, and that after reading them, Dr. L wrote that he had "no choice but to re-calculate the [IR]." We believe that the correct reading of Dr. L's comment is that he now understood that it was improper to round off the ROM measurements, and he would "re-calculate" the IR without that rounding error. We have reviewed the cited decisions, and do not find them to contain matters which would either "improperly influence" the designated doctor or "create prejudice in his evaluations." Our decision should not be viewed as an endorsement of the practice of sending our decisions to designated doctors. A simple statement to the effect that rounding off of ROM measurements is not permitted under the AMA Guides would have sufficed in this case.

The carrier argues that "the claimant should not receive an 18% IR when the only diagnoses are strain type injuries." We would point out that this is a case that was done under the third edition of the AMA Guides, and that ROM is often a significant component of the IR under the third edition. That Dr. L invalidated ROM for the shoulder in his first evaluation did not preclude him from assessing an IR for loss of cervical and lumbar ROM. Likewise, in his second evaluation and in his reconsideration, he was not precluded from assessing an IR for loss of ROM, as long as he obtained valid ROM measurements. The carrier's argument is not persuasive.

The hearing officer did not err in determining that the claimant's IR was 18%, in accord with the designated doctor's report, which is accorded presumptive weight under Section 408.125(e). We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer considered the relevant medical evidence and decided that the great weight of the medical evidence was not contrary to the opinion of the designated doctor. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record and resolved what facts were established. We conclude that the hearing officer's determination is sufficiently supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TRINITY UNIVERSAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RONALD I. HENRY
10000 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75230.

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Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

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Robert W. Potts
Appeals Judge